

Town of Amherst
Zoning Board of Appeals - Special Permit

DECISION

Applicant: William Gillen

Date application filed with the Town Clerk: February 16, 2007

Nature of request: To renew Special Permit ZBA FY97-28 to continue operating the Amherst Creamery Office Building

Address: 150 Fearing Street (Map 11C, Parcel 36, R-G Zoning District)

Legal notice: Published on February 21 and 28, 2007 in the Daily Hampshire Gazette and sent to abutters on February 21, 2007

Board members: Barbara Ford, Hilda Greenbaum and Russ Frank

Submissions:

The petitioner submitted a management plan and a site plan with the application.

Assistant Fire Chief Michael Zlogar submitted a memo dated March 6, 2007, stating that there were no outstanding issues with the property.

Susan and Frank Hugus submitted a letter of support for the Special Permit renewal, dated March 2, 2007.

Site Visit: March 6, 2007

The Board met with Mr. Gillen at the site. They observed the following:

- A two-story office building with a large parking lot at the edge of a residential district and next to the University of Massachusetts;
- High rise dormitories for the University close by;
- A fence and a hedge of large pines along the southern border, and a stockade fence along the eastern border, both existing to shield the adjacent residences from the building;
- A pizza restaurant located along Fearing Street and part of the building, but permitted separately from the rest of the office building;
- A handicap accessible ramp from the exterior to the second (top) floor of the building;
- A handicap accessible restroom on the second floor of the building.

Public Hearing: March 8, 2007

The petitioner had not arrived when the ZBA Chair opened the hearing. There was discussion among the Board members as to whether the hearing should be continued to another date or to proceed without Mr. Gillen present. The Board decided to proceed since the hearing dealt with a renewal of a Special Permit in which nothing had changed in the last 10 years.

Chair Barbara Ford disclosed that at least 15-20 years ago, her husband was a tenant in the building at 150 Fearing Street. Also in the past, Ms. Ford worked in another of Mr. Gillen's properties; and at that time had some business interactions with Mr. Gillen. She stated that currently and in the past she had no financial interest in any of Mr. Gillen's properties, and that she believes that she can serve on this panel with an open mind.

Ms. Ford read into the record the memo from Assistant Fire Chief Zlogar dated March 6, 2007 and listed above. She also read the letter of support from Susan and Frank Hugus, dated March 2, 2009

Ms. Ford asked the Board if there was any issue in renewing the Special Permit. The other members of the Board had none since nothing had changed in terms of operations of the building, so the Board began to review the conditions of the previous Special Permits, FY96-0007 and FY97-0028.

Mr. Gillen arrived and the Board discussed the Management Plan and former conditions of the Special Permits with him. The following information was given:

- The Kaplan College Prep business had recently changed their signs at a public meeting, as conditioned in Special Permit FY97-0028;
- No other external sign changes had occurred in the last 10 years;
- Trash gets picked up regularly, as stated in the management plan;
- It's difficult to control over-parking on the site because it's not clear if a business is having a Board meeting, for example, or students are having a party across the street;
- If the petitioner must tow cars from the lot, it's usually done at 7 AM, which means that the cars have been left there overnight without permission;
- The custodian of the building or the tenants let him know if there are parking or noise problems, or any other issues;
- He lives just a few houses away, and can deal with parking problems more readily;
- No changes are needed to the permit conditions.

Mr. Frank moved to close the evidentiary part of the hearing. Ms. Ford seconded the motion, and the vote was unanimous to close the hearing.

Public Meeting:

The Board noted that the building was formerly a Creamery, selling ice cream, and associated with the Agricultural College of the University of Massachusetts. The building and its uses have always been non-conforming for the General Residence Zoning District, but have been "grandfathered". The use of the building as offices is an extension of the non-conforming use, permitted under Section 9.22 of the Zoning Bylaw.

The Board discussed the conditions associated with the Special Permit during the public meeting.

Findings:

The Board finds under Section 10.38 of the Zoning Bylaw, Specific Findings required of all Special Permits, that:

10.380 and 10.381 – The proposal is suitably located in the neighborhood and is compatible with existing uses because the uses within the building are quiet and have no negative impact on the residences nearby.

10.382 and 10.385 – The proposal would not constitute a nuisance and reasonably protects the adjoining premises against detrimental or offensive uses on the site because the building acts as a kind of buffer between the quiet residential areas to the south, and the noisier dormitories of the University just to the north.

10.383, 10.384 and 10.387 – The proposal would not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians and the proposal provides convenient and safe vehicular and pedestrian movement within the site and in relation to adjacent streets because there have been no complaints in recent years and the parking lot is large enough to accommodate the businesses associated with the building. The immediate abutters, who had complained about the location of the dumpster and lack of lighting in the parking lot 10 years ago, now submitted a letter supporting the permit's renewal.

10.386 – The proposal ensures that it is in conformance with the Parking and Sign regulations of the town because there are 61 parking places within the lot, and conservative calculations according to Section 7.004 of the Zoning Bylaw indicate that 52 spaces are needed. Signs are controlled by a condition of the Special Permit.

10.389 – The proposal provides adequate methods of disposal and/or storage for sewage, refuse, recyclables and other wastes because according to the approved Management Plan, refuse and recycling are picked up weekly and the building is connected to public sewer and water.

10.391 and 10.395 – The proposal protects unique or important natural, historic or scenic features because the historical building has been altered little on the outside through the years.

10.392 and 10.393 – The proposal provides adequate landscaping, including the screening of adjacent residential uses, because the conditions of previous permits require fencing, a screen of trees, and lighting that faces the parking lot only, not the residences abutting the property.

10.398 – The proposal is in harmony with the general purpose and intent of the Zoning Bylaw because it provides needed office space close to the University, preserves an historical building, and protects the health, safety, convenience and general welfare of the inhabitants of the Town of Amherst.

Public Meeting – Zoning Board Decision

Mr. Frank made a motion to APPROVE the Special Permit, with conditions. Ms. Ford seconded the motion.

For all of the reasons stated above, the Board VOTED unanimously to renew Special Permit ZBA FY97-00028 on the premises at 150 Fearing Street, (Map 11C /Parcel 36, R-G Zoning District), with conditions, as requested in the application filed by William Gillen.

BARBARA FORD

HILDA GREENBAUM

RUSSELL FRANK

FILED THIS _____ day of _____, 2007 at _____,
in the office of the Amherst Town Clerk _____.

TWENTY-DAY APPEAL period expires, _____ 2007.
NOTICE OF DECISION mailed this _____ day of _____, 2007
to the attached list of addresses by _____, for the Board.

NOTICE OF PERMIT or Variance filed this _____ day of _____, 2007,
in the Hampshire County Registry of Deeds.

Town of Amherst
Zoning Board of Appeals

SPECIAL PERMIT

The Amherst Zoning Board of Appeals hereby grants a renewal of Special Permit ZBA FY97-0028 to continue operating the Amherst Creamery Office Building at 150 Fearing Street (Map 11C, Parcel 36, R-G Zoning District), as requested in the application filed by William Gillen, subject to the following conditions:

1. The existing stockade fence shall be maintained on the east and south property lines.
2. A sight-impervious screen of evergreen shrubs or trees at least six feet in height shall be planted in the grassed area along the easterly property line and maintained in perpetuity, including replacement as necessary.
3. All plans for exterior changes (for example, changes in the windows, brick facing, lighting, awnings, etc.) shall be reviewed by the Board at a public meeting prior to issuance of a building permit.
4. Any changes to existing signs shall be submitted to the Board for review and approval at a public meeting.
5. Any changes to the allocation or layout of offices shall be filed with the Building Commissioner.
6. Parking, including entries and exits, shall be as shown on the plan approved by the Board at the public meeting on March 8, 2007 and on file in the ZBA office, Planning Department.
7. Existing lighting on the east side of the parking lot shall be maintained so that the parking area is illuminated, but the abutting properties are not.
8. Storage of recycling and trash shall be as shown on the plan submitted and approved by the Board at the public meeting March 8, 2007 and on file in the ZBA office, Planning Department.
9. The building shall be maintained as described on the Management Plan approved by the Board at the public meeting March 8, 2007 and on file in the ZBA office, Planning Department.
10. There shall be no coffee shop, food service or similar use associated with the office uses.
11. Office uses shall be limited to the following types:
 - o Consultation, research, or data processing;
 - o Business or professional offices involving limited client traffic flow;
 - o Offices associated with the University or Massachusetts or other educational facilities.
12. Upon a change of ownership or management, the property owner shall submit a new or revised management plan to the Board for review at a public meeting, in order to determine whether a new or revised Special Permit is needed.

BARBARA FORD, Chair
Amherst Zoning Board of Appeals

DATE